IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B.CIVIL WRIT PETITION NO.6489/2003.

Smt.Chander Kala. **VERSUS** State of Rajasthan & Ors.

14.12.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.B.B.L.Sharma, for the petitioner.
Mr.B.K.Sharma, Deputy Government Advocate.

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The copy of the writ petition has been supplied to the learned Deputy Government Advocate. Service is complete.

The petitioner has claimed the relief of compensation in this writ petition on account of the alleged failure of sterilization operation which the petitioner has undergone at the C.H.C., Rajgarh.

The case of the petitioner is that despite the aforesaid sterilization operation the petitioner conceived a child which was born on 02.08.2002, as such, the petitioner should be awarded compensation.

In the recent decision of the Hon'ble Apex Court in State of Punjab Vs. Shiv Ram and Others reported in JT 2005 (7) SC 606, the Hon'ble Apex Court has held that it is a matter to be examined after appreciation of the evidence as to whether there was any negligence or not. The said facts cannot be examined in the writ jurisdiction.

However, having held so there is yet another aspect of the matter to which a reference may be made. Pursuant to the decision of the Hon'ble Supreme Court in writ petition No.209/2003 [Ramakant Rai Vs. Union of India] dated 01.03.2005, the Government of India, Ministry of Health and Family Welfare has prepared a Scheme by the name of Family Planning Insurance Scheme effective from December, 2005 and which has been sent to the State Government also for implementation and in which provisions for compensation have also been laid down on account of failure of sterilization cases under Section I. The aforesaid Scheme is prescribed in Chapter 1. Under Section II, it has been provided, as follows:-

> "**Section II:**
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> All the doctors/health facilities including doctors/health facilities of Central, State, Local-Self Governments, other public sectors and all the accredited doctors/health facilities of non-government and private sectors rendering Family Planning Services conducting such operations shall stand indemnified against the claims arising out of failure of sterilization, death or medical complication resulting therefrom upto a maximum amount of Rs.2 lakh per doctor/health facility per case. The cover would also include the legal costs and actual modality of defending the prosecuted doctor/health facility in Court, which would be borne by the Insurance Company within certain limits.
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> *Liability of the Insurance Company under this Section would be limited to four cases of negligence in respect of every doctor, beyond which the doctor/health facility concerned would be himself/herself responsible for his/her lapse, apart from any other action that may be taken by the Government against the doctor/health faciltiy.*

The Scheme is uniformly applicable for all States/UTs. Government of India has paid entire premium for the Insurance Policy. States do not have to incur any expenditure under this Scheme. The Insurance Company will made payment against the claims of acceptors of sterilization directly to acceptors without any hassle.

Settlement of cases not covered under the Family Planning Insurance Scheme

There might be cases not covered by the Family Insurance Scheme, viz., cases of sterilization operations conducted before coming into force of this insurance Scheme, cases not covered under the National Protocol, cases already pending in Courts etc. Liability in respect of such cases would be met by the State Government/UT Administration from out of the Miscellaneous Purpose Contingency Fund created in respective State/UT by apportioning some amount from the grants released to them by the Union Government under the Scheme of Compensation for loss of wages for acceptors of Sterilization/IUD Insertions or under the Scheme of Flexible Funding for State Programme Implementation Plans (PIPs). The State may close to administer the Fund through the Insurance Company or through the government machinery."

(emphasis supplied)

In the light of the above, since the present case is one which arises before the commencement of the aforesaid Scheme framed by the Central Government, referred to above and also falls within the category of a pending case before this court, in case the petitioner seeks to move an application in accordance with the aforesaid Scheme, the State Government shall consider the said application filed by the petitioner for the payment of compensation in the light of the aforesaid

provisions out of the Miscellaneous Purpose Contingency Fund to the extent provided under the Scheme.

Subject to the above, this writ petition stands disposed of. However, in case, the petitioner reserves her right to seek alternative remedy of suit or otherwise, the petitioner would be at liberty to do so in addition to the above and if any amount is paid to the petitioner, the same shall be liable to be adjusted against the amount found due to be paid in such suit.

(DALIP SINGH),J.

Ramchandrkhatri, PS